

05-071

DEPARTMENT OF EDUCATION

Chapter 101:

MAINE UNIFIED SPECIAL EDUCATION REGULATION

SUMMARY: This rule governs the administration of the child find system for children age birth to twenty, the provision of early intervention services to eligible children birth to under age 3 (B-2) with disabilities and their families, and the provision of special education and related services to eligible children age three to twenty with disabilities and their families, implementing 20-A MRSA Chapters 301, and 303 and amendments thereto.

Italicized text signifies State requirements.

Non-italicized Times Roman text signifies federal statutory or regulatory requirements.

This amended rule only includes section XVIII 3(C). This section is posted for clarity on the amended language. To see Chapter 101 in its entirety, please see the [Rule Chapters for the Department of Education](#).

3. Special Education Finance: Private School Tuition Computations, Approval Procedures

A. General Principles

Special purpose private schools and general purpose private schools may, in accordance with this rule, provide special education services to children with disabilities and receive tuition payments for such services from SAUs or the Department. In order to receive public funds, a private school shall comply with 20-A MRSA Chapter 117, sub-chapter 2.

B. Annual Year-End Reports

Each special purpose private school shall file an EF-S-10 Year-End Report with the Department in the format required by the Commissioner. All requested information pertaining to actual revenues, expenditures, and enrollments and, where applicable, estimates shall be provided within the specified time limits.

C. Tuition Computation: Special Purpose Private Schools

The daily tuition rate at a special purpose private school shall be the sum of allowable expenditures divided by the number of student days. For purposes of this computation:

- (1) Allowable expenditures, calculated for the fiscal year (July 1 to June 30) immediately before the fiscal year for which the tuition rate is computed, include only the following:***
 - (a) Compensation of employees for the time spent on, and specifically identified as related to, the development and/or implementation of individualized educational programs;***
 - (b) Costs of materials acquired, consumed, or expended specifically for the development and/or implementation of individualized educational programs;***
 - (c) Equipment and other approved capital expenditures necessary for the development and/or implementation of individualized educational programs;***

- (d) *Travel expenses incurred specifically for the development and/or implementation of individualized educational programs; and*
- (e) *Indirect costs necessary for the development and/or implementation of individualized educational programs;*

(2) *The number of student days, calculated for the fiscal year immediately before the fiscal year for which the tuition rate is computed, is the sum of the days on which instruction was provided in accordance with the school's calendar actual days of student attendance for the year;*

(a) *The Department shall recalculate the number of student days for fiscal year 2023 using the number of days on which instruction was provided in accordance with the school's fiscal year 2022 calendar, and recalculate each school's allowable expenditures and 2023 tuition rate using the revised number of student days. The Department shall notify each special purpose private school of its revised tuition rate, which shall be effective immediately.*

(3) *The allowable expenditures calculated in accordance with paragraph (1) shall be divided by the number of student days calculated in accordance with paragraph (2);*

(3-A) Each SAU shall pay the daily tuition rate calculated above for the total number of student days, regardless of whether the student is in attendance each day, with the following exception: the IEP Team determines whether a student attends during ESY/full-year programming; if the IEP Team decides a student doesn't need ESY/full-year programming, the SAU is not required to pay the daily tuition rate for any day that falls outside the student's program year (e.g. during the summer months).

NOTE: The calculation of the daily tuition rate does not change based on whether a student attends during the typical school year only or beyond the typical school year through ESY or full-year programming. The only change is to the number of days for which the SAU is required to pay tuition.

(4) *For each year, the tuition rate for each special purpose private school shall be capped at its rate for the previous fiscal year plus the median change in the sum of allowable expenditures of all State of Maine approved special purpose private schools for the 2 fiscal years*

immediately before the year for which the tuition rate is computed; this is known as the adjustment factor.

- (a) In a year in which the median change is negative, the special purpose private schools with rates more than one standard deviation lower than the mean will not be subject to a further negative adjustment;*
- (b) In a year in which the median change is positive, the special purpose private schools with rates more than one standard deviation higher than the mean shall be capped at the rate for the previous fiscal year plus one half of the adjustment factor;*
- (c) The adjustment factor shall be no more than 6%.*
- (d) Nothing in subparagraph (4) shall limit any increase in the tuition rate resulting from the change in calculating the number of student days in subparagraph (2) from the actual days of student attendance to the days on which instruction was provided in accordance with the school's calendar.*

(5) Operating fund balances. General operating fund balances at the end of a special purpose private school's fiscal year must be carried forward to meet the school's needs in the next year. Net revenues in excess of 103% of the fiscal year's net expenses must be used to reduce the net expenditures in the following year.

(6) Chargeable rate. The maximum rate of tuition that may be charged by a special purpose private school is the rate computed under this subsection unless the school presents sufficient evidence to the Commissioner that a hardship will exist if a higher rate is not approved.

D. Exempted Private Agencies

This section shall not apply to, and the Commissioner shall have no authority over, tuition rates charged for special education programs by private agencies where the tuition is not paid, reimbursed or otherwise funded in whole or in part by this State.

E. General Purpose Private Schools with Exclusive Contracts or A Child Enrollment With Greater Than 60% Public Tuition Children.

A general purpose private school that has a contract with a SAU for the provision of elementary and/or secondary education or enrollment of greater than 60% publicly tuitioned children shall establish a tuition rate for special education services based on actual per child costs. The special education tuition rate shall be determined by dividing the sum of the allowable costs (based on the prior year expenditures) by the average daily enrollment of children. The allowable expenditures used in computing tuition of an on-going special education service in a general purpose private school shall be based on the prior year expenditures and the average daily enrollment of children shall be based on the actual number of children receiving special education services enrolled in the school for the prior school year.

F. General Purpose Private Schools with Tuition Children

A general purpose private school that does not have a contract with a school administrative unit for the provision of elementary and/or secondary education shall charge a tuition rate that does not exceed the State elementary or secondary per child tuition rate as computed under 20-A MRSA §§ 5804 and 5806.